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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

HOOPA VALLEY TRIBE,

Plaintiff,

v.

UNITED STATES BUREAU OF  
RECLAMATION; DEBRA ANNE  
HAALAND, in his official capacity as  
Secretary of the Interior; MARIA  
CAMILLE CALIMLIM TOUTON, in her  
official capacity as Commissioner of the  
United States Bureau of Reclamation;  
ERNEST A. CONANT, in his official  
capacity as U.S. Bureau of Reclamation  
California-Great Basin Regional Director;  
and UNITED STATES DEPARTMENT OF  
THE INTERIOR

Defendants.

Case No. 1:20-cv-01814-JLT-EPG

**NOTICE THAT IN NO LESS THAN FIVE BUSINESS DAYS THE DEPARTMENT OF  
THE INTERIOR MAY MAKE A DETERMINATION ON ADOPTING THE TRINITY  
MANAGEMENT COUNCIL'S RECOMMENDATION TO IMPLEMENT THE WINTER  
FLOW PROJECT**

On December 16, 2022, the Hoopa Valley Tribe moved to enjoin the Department of the Interior ("Interior") and its constituent agency, the Bureau of Reclamation ("Reclamation"), from

adopting and implementing the Trinity Management Council’s (“Council”) recommendation to proceed with the Winter Flow Project (“Project”). Before Plaintiff filed its motion for preliminary injunction (“PI”), the Federal Defendants and the Plaintiff negotiated an agreement to allow the parties to brief a PI rather than a temporary restraining order (“TRO”) and to provide the Court sufficient time to rule on a PI rather than a TRO over the holidays. Plaintiff’s motion was fully briefed on January 9, 2023, and Plaintiff had originally noticed oral argument for January 20th. On January 11th, the Court entered an order holding Plaintiff’s PI in abeyance and canceling oral argument until the parties briefed whether Plaintiff’s ninth claim is justiciable. Those briefs are currently due by January 25<sup>th</sup>. *See* ECF No. 124. In order to keep the Court informed and because the United States previously committed to providing notice to the Plaintiff prior to making a determination on the Project (absent an intervening decision by this Court on the PI), and due to Reclamation’s determination that to achieve the full results it would need to commence part-two of the Project no later than February 15, the Federal Defendants hereby provide notice that, in no less than five business days, Interior may make a determination on adopting the Council’s recommendation.<sup>1</sup>

The Project is time-sensitive and Dr. Michael Dixon, the federal scientist in charge of the Trinity River Restoration Program, has explained in his previously filed declaration that the Project has two parts. *See* Dixon Decl. ¶ 11, ECF No. 125-1. The first part of the plan recommends a peak flow of 6,500 cubic feet per second be released between December 15 and February 15 to coincide with a major storm event (such as the recent atmospheric rivers that have occurred on the West Coast) predicted to raise flows at the Trinity River above the North Fork

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<sup>1</sup> If Interior adopts the Council’s recommendation and there has been no decision on the PI from the Court, implementation of the Project would begin no sooner than fifteen business days after this notice, or February 13.

Trinity River gage to 4,500 cubic feet per second. *Id.* At this juncture, the opportunity to implement the weather-dependent portion of the Project has likely passed. *See* Decl. of Dr. Michael Dixon ¶ 16, ECF No. 125-10.

The second part of the Project is to release additional fixed volumes during the proposed elevated baseflow period of February 15 to April 15. This part of the plan is not weather-dependent; however, to achieve best results, the Federal Defendants need to start releases on February 15 as outlined by the Trinity River Winter Flow Project Final Report, August 2022. *Id.* If this second part of the Project is also missed, the entire Project will not be implemented whatsoever this year. Because the Federal Defendants have an implementation target of February 15 and because of the previously agreed upon commitment to provide notice to the Plaintiff, the Federal Defendants are hereby invoking the negotiated fifteen business day notice about (a) a determination to adopt (five business days); and (b) the actual implementation of the Project (ten business days after a determination is made). This will ensure that, should the Court not rule on the pending motion for a preliminary injunction, the Federal Defendants will have complied with its prior notice commitment and may, absent direction from the Court, still be able to implement and salvage at least some of the benefits of the Project. *See* Dixon Decl. ¶ 16.

If and when a determination on the Project is made by Interior, the Federal Defendants will file a separate notice notifying the Court and Plaintiff that the Council's recommendation is being adopted and that water releases will be made in no less than ten business days from the date of notice of adoption, which as noted in n.1 would be February 13<sup>th</sup> at the earliest.

Respectfully submitted this 20<sup>th</sup> day of January, 2023,

TODD KIM  
Assistant Attorney General

/s/ J. Scott Thomas  
JEFFREY SCOTT THOMAS  
Trial Attorney  
U.S. Department of Justice

*Attorneys for Federal Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 20, 2023, I electronically filed the **NOTICE THAT IN NO LESS THAN FIVE BUSINESS DAYS THE DEPARTMENT OF THE INTERIOR MAY MAKE A DETERMINATION ON ADOPTING THE TRINITY MANAGEMENT COUNCIL’S RECOMMENDATION TO IMPLEMENT THE WINTER FLOW PROJECT** with the Clerk of Court using the ECF system, which will automatically send email notification to the attorneys of record.

/s/ J. Scott Thomas  
JEFFREY SCOTT THOMAS